

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**JOHN M. MIKE MURPHY, and
MARTHA MURPHY,**

Plaintiffs,

V.

**EMILY R. SVOBODA, SAUL
SOLTERO, and SHARON
SOLTERO,**

Defendants.

8:13CV155

ORDER

This matter is before the Court on Defendants’ Motion to Compel an Independent Medical Examination and Deposition in the District of Nebraska ([filing 34](#)). Defendants’ motion will be denied.

BACKGROUND

This case arises from a motor vehicle accident which occurred on or about October 4, 2010. Plaintiff John Murphy (“Mr. Murphy”) alleges that Defendant Emily Svoboda caused the accident at issue, which resulted in injuries to Mr. Murphy, including a brain injury and dementia due to head trauma. ([Filing 1.](#))

Defendants have requested that Mr. Murphy submit to an independent medical examination pursuant to [Fed. R. Civ. P. 35](#) in the District of Nebraska. Defendants have also requested that Mr. Murphy be made available in the District of Nebraska for a deposition. Plaintiffs do not dispute that Defendants have the right to request a medical examination and depose Mr. Murphy. Rather, Plaintiffs contend that Mr. Murphy should not be compelled to travel to Nebraska because his treating physician has advised him not to travel. Plaintiffs have offered to make Mr. Murphy available for a physical examination and deposition within a reasonable distance of Mr. Murphy's residence in Auburn, Alabama. Defendants maintain, however, that the medical exam and deposition should take place in Nebraska because

Plaintiffs decided to file suit in this jurisdiction.

DISCUSSION

The Court finds that requiring Mr. Murphy to travel to Omaha, Nebraska would impose an unduly heavy burden upon Plaintiffs, given Mr. Murphy's health condition. Mr. Murphy suffers from chronic lymphocytic leukemia and dementia. Mr. Murphy's treating oncologist, Dr. Brandon Johnson, has opined that Mr. Murphy "certainly is not safe to travel" and "traveling out of state would be physically taxing if not dangerous to [Mr. Murphy's] health and essentially impossible." ([Filing 38-2](#).) Defendants may request a medical examination and depose Mr. Murphy. However, Mr. Murphy will not be compelled to come to Nebraska. If necessary, Mr. Murphy has offered to travel to Atlanta, Georgia, approximately 108 miles from Auburn, for the medical exam. Surely, a physician can be retained in that area for such an examination.

IT IS ORDERED that Defendants' Motion to Compel an Independent Medical Examination and Deposition in the District of Nebraska ([filing 34](#)) is denied.

DATED September 22, 2014.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**